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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,039	05/06/2005	Paulo Do Rosario	0678-1001	2398
466 7590 03/14/2011 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314			EXAMINER JACYNA, J CASIMER	
			ART UNIT 3754	PAPER NUMBER
			NOTIFICATION DATE 03/14/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/534,039

Applicant(s)

DO ROSARIO ET AL.

Examiner

J. Casimer Jacyna

Art Unit

3754

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 02 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 02 March 2011. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754

Continuation of 11, does NOT place the application in condition for allowance because: Applicant contends that Goda does not inherently disclose an actuator as defined in the specification. There is nothing inherent in the actuator 40 of Goda. Element 44 is a push button and moves pump piston 43 which causes fluid to be propelled through passage 45 and through tube 60. This is equivalent to the disclosed pushbutton 19 which moves pump 5 to propel fluid through passage 45 and tube 31. Also the invention is defined by the claims and not the entirety of the specification. Goda discloses a device with an actuator as claimed. If the disclosed actuator has additional features not shown in Goda then they need to be incorporated into the claims. It is not apparent what portions of the specification are or are not being claimed by merely using a word like "actuator". Applicant further contends that that outlet is not fixedly connected to the reservoir. However arm 99 is a solid fixed attachment even though it can be adjusted to different positions at 98. Nevertheless, when bolt 98 is cinched down elements 98 and 99 are fixedly attaching outlet 81 to the reservoir as claimed. Finally, Applicant contends that because Goda can be adjusted into positions where it does not anticipate the claims then the positions which do anticipate the claims must be ignored. However, the opposite is true. If a device has multiple embodiments or can be adjusted or reassembled into multiple positions, only one of the embodiments or assemblies or positions need to anticipate the claims to present a valid rejection. Lee is only relied upon for a teaching of the shape of the reservoir. Therefore the outlet member of Lee is not material to the rejection. The actuator of Campbell is a pushbutton connected to a piston pump arrangement that is similar to Goda and is an actuator as claimed for the same reasons as stated in Goda. Also, when Campbell is in use it is fixed into one specific position to deliver fluid to one specific location with a specific orientation as claimed. Whether or not Campbell can later be disassembled and reassembled into a new position and orientation to deliver fluid to a different location is not material.